APPEAL NO. 041147
FILED JULY 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 3, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) sustained a work-related injury on _____, but that he did not timely report the injury to his employer and did not have good cause for his failure to do so and, consequently, the injury is not compensable. The claimant appeals the notice determination and its resulting effect on the compensability determination and asserts that the hearing officer decided an additional issue that was not before him. Additionally, the claimant argues that the hearing officer erred by not issuing a requested subpoena and not compelling production of the information that was the subject of the subpoena. The appeal file contains no response from the respondent (self-insured).

DECISION

Affirmed.

The claimant asserts that the hearing officer erred in making a "finding of an issue not before [him]." Specifically, the claimant objects to the statement in the Background Information portion of the decision wherein the hearing officer stated "The claimant's reliance on his attorney also caused the reporting of the claimed injury of _____, to be delayed until late March." It appears that in making this statement, the hearing officer was attempting to explain why the claimant failed to timely report the injury in accordance with Section 409.001. As the evidence supports this statement, we perceive no error in the complained-of language. We also cannot agree that in making this statement, the hearing officer resolved an issue not before him. The hearing officer's decision succinctly resolves the disputed notice issue by concluding that the self-insured is relieved from liability under Section 409.002 due to the claimant's failure to notify his employer in accordance with Section 409.001.

The claimant argues that the hearing officer erred by not issuing a subpoena for certain requested information from the self-insured. A review of the claimant's "Request for Subpoena," which was filed prior to the hearing date, reveals that he explained that he was unable to tender the fees required to issue a subpoena and requested that any such fees be charged to the self-insured. We cannot agree that under these facts, the claimant actually made a request for a subpoena. Furthermore, we would point out that the claimant failed to reurge the request at the hearing and, as such, failed to preserve error on appeal.

Section 409.001 requires that an employee, or a person acting on the employee's behalf, shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. Failure to do so, absent a showing of good cause or actual

knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. The date upon which notice is given is a factual question for the hearing officer to resolve. Section 410.165(a). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's notice determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Margaret L. Turner
Appeals Judge